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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on allegations of massacres and other human rights violations occurring in eastern Zaire (now the Democratic Republic of the Congo) since September 1996, prepared by Mr. Roberto Garretón, Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Jonas Foli, member of the Working Group on Enforced or Involuntary Disappearances, pursuant to paragraph 6 of Commission on Human Rights resolution 1997/58

I. INTRODUCTION

1. The joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire 1/ since September 1996 was established by the Commission on Human Rights pursuant to paragraph 6 of its resolution 1997/58. It is composed of the Special Rapporteur on the situation of human rights in the former Zaire, Mr. Roberto Garretón, the Special Rapporteur on extrajudicial, summary and arbitrary executions, Mr. Bacre Ndiaye, and a member of the Working Group on Enforced or Involuntary Disappearances, Mr. Jonas Foli.

1/ The name "Zaire" will be used in all cases in which the events in question occurred prior to 17 May 1997 and the name "Democratic Republic of the Congo" will be used in the case of events occurring from that date onwards.

2. The joint mission was requested to submit two reports on the fulfilment of its mandate: one to the General Assembly by 20 June 1997, which was submitted as requested (A/51/942); and the other, the present report, to the Commission on Human Rights.

II. FULFILMENT OF THE MANDATE - REPORT TO THE GENERAL ASSEMBLY

3. In the above-mentioned report to the General Assembly (A/51/942), the joint mission described:

(a) Its mandate, as well as its methods of investigation, which it analysed and narrowed down (paras. 1 and 2 and 9 to 13);

(b) The mission to Rwanda from 4 to 11 May, while waiting for the authorities, who, at the time, were rebels belonging to the Alliance des forces démocratiques pour la libération du Congo-Zaïre (AFDL), to allow it to go to eastern Zaire, as well as the action taken by the Secretary-General and the Officer-in-Charge of the Office of the High Commissioner for Human Rights (paras. 3 to 7);

(c) The obstacles created by AFDL to the fulfilment of its mandate; and its position thereon (paras. 25 to 37);

(d) The work done by the delegation of negotiators of the Office of the High Commissioner for Human Rights and by the United Nations team responsible for evaluating security in the Kivu region to enable the joint mission to perform its task (paras. 14 to 22);

(e) The investigations it managed to carry out in Geneva and during its stay in Kigali (paras. 8, 23 and 24).

4. In the subsequent chapters, the joint mission reported on all the information it received concerning:

(a) Attacks on the Rwandan refugee camps in Zaire, both directly and by the blockading of humanitarian assistance;

(b) Allegations of massacres and other human rights violations, classified according to the party reportedly responsible:

Violations attributed to AFDL, the Banyamulenge and their allies, which, as indicated in the conclusions, account for 68.02 per cent of the allegations received;

Violations attributed to the Zairian armed forces, accounting for 16.75 per cent of the allegations brought to the mission's attention;

Violations attributed to the former Rwandan armed forces (FAR) and the Interahamwe militias, i.e. 9.64 per cent of the allegations received;

Violations attributed to the Rwandan Patriotic Front, i.e. 2.03 per cent of the allegations received;

Violations attributed to the armed forces of Burundi, i.e. 2.03 per cent of the allegations received; and

Violations attributed to mercenaries fighting on the side of the Zairian armed forces, accounting for 1.52 per cent of the allegations brought to the mission's attention.

III. APPLICABLE PROVISIONS OF INTERNATIONAL LAW

5. Chapter VI of the report of the joint mission to the General Assembly described the relevant rules of law taken into account in replying to three basic questions:

(a) Do the incidents described constitute a crime of genocide?

6. The answer is: "There is no denying that ethnic massacres were committed and that the victims were mostly Hutus from Burundi, Rwanda and Zaire. The joint mission's preliminary opinion is that some of these alleged massacres could constitute acts of genocide. However, the joint mission cannot issue a precise, definitive opinion on the basis of the information currently available to it. An in-depth investigation in the territory of the Democratic Republic of the Congo would clarify this situation (paras. 79 and 80).

(b) Do the incidents described constitute violations of international humanitarian law?

7. In reply to this question, the joint mission stated that: "Based on the foregoing, the joint mission is of the view that the provisions of article 3 common to the four Geneva Conventions must be applied to the conflict in eastern Zaire" and that, while the allegations referred to suggest that there were serious breaches of this provision, "such breaches can be attributed not only to the Alliance, but also to the other parties to the conflict" (paras. 81 to 85).

(c) Do the incidents described constitute crimes against humanity?

8. In this connection, the mission indicated in its report that: "In the joint mission's opinion, the concept of crimes against humanity could also be applied to the situation which reigned and continues to reign in the Democratic Republic of the Congo" (para. 88).

IV. FUTURE ACTIVITIES OF THE JOINT MISSION. INVESTIGATION TEAM APPOINTED BY THE SECRETARY-GENERAL

9. In chapter VII of its report, the joint mission indicated that it "has already begun preparations for a further attempt to visit the area where the conflict took place" (para. 90), stressing that the Government of the Democratic Republic of the Congo had to remove the obstacles it had set up.

10. It also indicated that, on 20 June, the Secretary-General had sent a "preparatory mission" to speak with President Kabila and that, as the report was being finalized, the preparatory mission was in Kinshasa.

11. The joint mission expressed the hope that "the authorities of the Democratic Republic of the Congo will provide the necessary guarantees for the investigation to be conducted in strict compliance with resolution 1997/58, as interpreted by the mission within the above-mentioned terms of reference" (para. 92).

12. Because the joint mission was refused entry into the territory of the Democratic Republic of the Congo, the Secretary-General, in a letter addressed to President Kabila on 15 July, set up a team to investigate the serious violations of human rights and international humanitarian law allegedly committed in the Democratic Republic of the Congo (formerly Zaire) since 1 March 1993, stating that the team was to report to him by December 1997 at the latest.

13. In the circumstances, the joint mission had no choice but to suspend its preparations for a further visit to the region that would have enabled it to fulfil the mandate entrusted to it by resolution 1997/58. The two mandates apparently differ only in one respect: the investigation requested by the Secretary-General is supposed to relate to incidents which occurred as of 1 March 1993, whereas that of the Commission on Human Rights was to relate to incidents occurring as of early September 1996.

14. In a spirit of cooperation, two members of the mission met on 13 August in Geneva with the investigation team appointed by the Secretary-General and the archeologists, pathologists, anthropologists and investigators who were to accompany it and handed over to them all the documentation that had been collected since the establishment of the joint mission.

15. The joint mission learned that the investigation team appointed by the Secretary-General encountered several obstacles set up by the Congolese authorities, with the result that it was not able to complete its work by the scheduled date and, by a letter from the Secretary-General dated 27 November 1997, the submission of its report was postponed until 31 May 1998. The joint mission of the Commission on Human Rights will therefore not be able to take that report into consideration when it submits its own report orally at the fifty-fourth session of the Commission on Human Rights.

V. THREATS AGAINST PERSONS WHO COOPERATED WITH THE UNITED NATIONS

16. Both the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the former Zaire and the joint mission have received information relating to acts of intimidation, arrests and other human rights violations committed by AFDL leaders and the authorities of the Democratic Republic of the Congo against persons who cooperated with the investigation team appointed by the Secretary-General, including:

(a) Bertrand Lukando, President of the Regional Council of Non-Governmental Organizations for Development (CRONGD) in Maniema and member of the human rights organization Haki Za Binadamu, was accused of being an "enemy of the people" and was arrested on 15 August; he was severely tortured;

(b) Ramazani Diomba, CRONGD Executive Secretary in Maniema, suffered the same fate at the same time and required hospitalization for five days; he was arrested for having communicated information to the United Nations about the massacres committed by Batutsi members of AFDL;

(c) Bosange Yema, a journalist, was arrested on 18 November and accused of being an agent working for the investigation team appointed by the Secretary-General; he was released three days later;

(d) Roger Sala Nzo Badila, Secretary-General of the National Human Rights Centre (CENADHO), was arrested in Kinshasa on 23 November and held in custody for 48 hours without explanation, on the orders of the Prosecution Department and on the same charges; his home and his office were searched and all the documentation in his possession was seized;

(e) On 10 November, the Presidential Security Service searched the premises of the CODHO human rights organization in Kinshasa, seized all the documents it found and arrested three nephews of the Chairman of the Committee, N'sil Luanda Shandwe, on the grounds that the Committee had sent a letter to the team appointed by the Secretary-General to investigate the massacres carried out in the eastern part of the country;

(f) During a meeting in late November between non-governmental organizations and the Minister of Social Affairs, the Minister's administrative adviser told an official of the women's and children's department of the Zairian Human Rights Association (AZADHO) that "all of the Government's problems with the United Nations can be blamed on Guillaume Ngefa (President of AZADHO), who will have to wait 32 years to come home, but he will be dead by then";

(g) In November, in the eastern province of Kisangani, Commander Camille Shema, who is occupying the residence of the Director of the Congolese Commercial Bank at the Immotshopo in the city, reportedly picked up 47 young Congolese AFDL political-military officers trained to use PK 107s on the Ituri road and assigned them the job of going to the various places where the massacres were committed to urge people not to tell the investigation team anything when it went to those places. On 23 November, 33 Rwandan refugees in Kisangani General Hospital were abducted and taken in two trucks to an unknown destination. These strongarm tactics, mainly by soldiers from Rwanda, were used with the complicity of Commander Shema, who is himself of Tutsi origin;

(h) On 13 November, a 5 p.m. curfew was decreed by AFDL soldiers throughout the town of Mbandaka in Equateur region. People who break the curfew are arrested and beaten and all their property is taken away from them. This measure is intended to prevent the population from giving testimony to the investigation team about the Rwandan refugees massacred at Wendji Secli and along the Wendji-Mbandaka road. The mayor of the town, Mr. Blaise Mokekola, and the governor, Mr. Motya, are reportedly implicated in this operation to remove all traces of the massacres of refugees at Mbandaka. In this connection, NZ 10,000,000 were given to the village chief, Lofosola, alias "Mapassi", near Wendji, to "pay back" persons who locate and dig up the bones, which are then thrown into the river. The operation was launched in anticipation of the investigation team's deployment in this region in

December. The two above-mentioned authorities reportedly also conducted a campaign of intimidation against the population, which was asked not to cooperate with the United Nations investigators;

(i) On 15 December, a protest demonstration against the investigation team forced it to withdraw from Mbandaka for security reasons. The local population, which organized the demonstration, was encouraged to do so by the local authorities.

VI. CONCLUSIONS AND RECOMMENDATIONS

17. Since the Secretary-General of the United Nations set up an investigation team under his authority and with a mandate similar to that of the joint mission of the Commission on Human Rights, the joint mission suspended its investigations and gave the team all its documentation.

18. Without firm determination on the part of the international community to shed light on the extremely serious allegations referred to in this report, the tradition of impunity which prevails in the Democratic Republic of the Congo and in the Great Lakes region is very likely to be carried on. Its unfortunate consequences will be, inter alia, to encourage the repetition of massacres of persons who are the weakest by those who are the strongest at that particular time, to jeopardize efforts to re-establish peace in the region and, by allowing the miscarriage of justice, to dash hopes of the re-establishment of the rule of law. As far as the investigation is concerned, the Congolese precedent might also give other actors on the international scene the wrong idea as a result of acceptance of the fait accompli and the policy of a "double standard" in respect of accountability for serious and large-scale violations of human rights and humanitarian law. On the basis of the foregoing, the joint mission reiterates all the conclusions and recommendations it formulated in the preliminary report submitted to the General Assembly (A/51/942).

19. It also endorses the recommendation made by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Democratic Republic of the Congo in paragraphs 237 to 239 of the report he submitted to the General Assembly (A/52/496):

> "237. Mechanisms of the Commission on Human Rights. Since 1967, the Commission has developed a number of mechanisms for carrying out in-depth studies of situations which reveal a consistent pattern of human rights violations. Such mechanisms involve the conduct, by experts, of studies on human rights in a given country, on a particular human right or on a specific form of human rights violation. Experience has shown that special rapporteurs have presented objective reports, whose basic purpose is to determine whether or not specific actions are consistent with international declarations and agreements. It is true that the work of special rapporteurs is usually not recognized by the Governments concerned. However, it generally is recognized by victims of human rights violations, non-governmental organizations and States which respect those rights in their policies and international relations. The author can attest to the importance of these so-called

special procedures in securing the enjoyment of greater freedom, based on his experience as a victim of violations and a defender of human rights in his own country.

238. The World Conference on Human Rights, held in Vienna in 1993, recommended increased coordination in support of human rights and fundamental freedoms within the United Nations system, proposed that the Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs and underlined the importance of preserving and strengthening those mechanisms.

239. This is an unfinished task which faces opposition from some States. Capitulating to them might bring results in the short term, but in the interests of a long-term vision, Vienna must not be forgotten."